



THE CITY OF NEW YORK
LAW DEPARTMENT

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January 4, 2018

BY ECF

Honorable William H. Pauley, III
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Smith v. City of New York et al., 17-cv-6104 (WHP)

Your Honor:

I am a Senior Counsel in the Special Federal Litigation Division of the New York City Law Department, attorney for Defendant City of New York (“City”) in the above-referenced matter.¹ Without appearing on his behalf or making any representations with respect to service, the undersigned respectfully requests that this Court *sua sponte* grant Defendant Correction Officer McQuillar a forty-five (45) day enlargement of time to respond to the complaint from January 8, 2017 until February 22, 2018. This is the first request for an enlargement of time to respond to Plaintiff’s Complaint. This Office was unable to obtain consent from Plaintiff because Plaintiff, who appears *pro se*, is incarcerated and cannot be reached expeditiously.

By way of background, Plaintiff filed the complaint in this matter on August 11, 2017, alleging that while he was incarcerated on Rikers Island on May 26, 2017, an unidentified number of New York City Department of Corrections (“DOC”) Officers, along with defendant Correction Officer McQuillar, used excessive force against him in the course of a cell search. (Complaint, Dkt. No. 1 at ¶¶ 8-12). Further, Plaintiff alleges that unidentified defendants “deprived [him of] proper medical attention,” and that defendant City failed “to train employees.” (Complaint, Dkt. No. 1 at ¶¶ 27, 31). On November 9, 2017, Defendant McQuillar filed a waiver of service making his answer due on January 8, 2018. (Nov. 9, 2017 Waiver of Service Returned Executed, Dkt. No. 11).

¹ This case is assigned to Assistant Corporation Counsel Daron Ravenborg, who is presently awaiting admission to the New York Bar and is handling this matter under my supervision. Mr. Ravenborg may be reached directly at 212-356-0822 or dravenbo@law.nyc.gov.

In the course of investigating this matter, the undersigned learned that there is an ongoing DOC Investigations Division investigation arising out of the incident alleged in the Complaint, and into the alleged actions of Officer McQuillar. On January 2, 2018, Defendant City filed a letter motion to stay the case pending the resolution of that investigation. (Jan. 2, 2018 First Letter Motion, Dkt. No. 19). On the same day, Your Honor denied the motion. (Jan. 2, 2018 Order, Dkt. No. 20).

Due to the pending DOC investigation, and pursuant to Section 50-k of the New York General Municipal Law, our office has declined to represent Officer McQuillar at this time. See Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)). Defendant Officer McQuillar will need to obtain other counsel for the remainder of this matter, or until the investigation closes, at which point Corporation Counsel may reassess its representation decision. As of today, this office does not know when the investigation will close. Further, upon information and belief, Officer McQuillar is out of town until January 24, 2018. The requested enlargement of time is necessary to ensure that defendant McQuillar's defense is not jeopardized during the pendency of the DOC investigation.

For the foregoing reasons, Defendant City respectfully requests that this Court *sua sponte* grant Defendant Correction Officer McQuillar a forty-five (45) day enlargement of time to respond to the complaint from January 8, 2017 until February 22, 2018.

Thank you for your consideration herein.

Respectfully submitted,

_____/s/
Suzanna Publicker Mettham
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